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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000102

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SUBJECT: BOSNIA - STATE COURT MUST RELEASE CONVICTED WAR
CRIMINALS FROM CUSTODY

REF: A) 08 SARAJEVO 1236 B) SARAJEVO 77 C) SARAJEVO 88

Classified By: Michael J. Murphy For Reasons 1.4 (B) and (D)

11. (SBU) SUMMARY: Just as Bosnia is gaining momentum with regard to war crimes prosecution, State Court officials have raised the alarm about the release from custody of convicted war criminals pending appeals. A provision in the BiH Criminal Procedure Code (CPC) prescribes that after a first instance verdict has been rendered, a defendant cannot remain in custody for more than nine months even if his/her appeal is pending. Because the processing of the appeals of some complex war crimes cases is exceeding this time limit, the State Court is legally bound to release from custody individuals convicted of the country's most egregious war crimes. The court has already released two individuals involved in a case transferred from the International Tribunal for the Former Yugoslavia (ICTY) to Bosnia. Ten more individuals involved in two other high-profile cases -- another case transferred from the ICTY and the historic Kravice case in which a domestic court for the first time convicted individuals of committing genocide -- are slated to be released within the next three months. The BiH CPC will have to be changed before then to ensure that these individuals remain in custody. END SUMMARY.

War Criminals Being Released From Custody

12. (U) State Court officials have recently brought to the attention of judicial officials, the Office of the High Representative (OHR), and other members of the international community the problem of convicted war criminals being released from custody. Article 138(3) of the BiH Criminal Procedure Code (CPC) stipulates that defendants cannot remain in custody for more than nine months even if their appeals are pending. In practice, this provision obligates the State Court to release from custody individuals convicted of war and other serious crimes who are potential flight risks. The HighRep, upon the request of State Court officials, had previously used the Bonn Powers to extend the custody timeframe limit from six to nine months. But owing to their experiences with complex war crimes cases, State Court officials have concluded that the nine-month custody limit must be extended yet again.

13. (U) With this in mind, State Court officials asked the State Ministry of Justice to put forward a proposal to amend the BiH CPC to the BiH Parliament at the earliest opportunity. They noted (belatedly) that the State Court had

no choice but to release from custody two individuals in an "11bis case" (that was transferred from the International Tribunal for the former Yugoslavia --ICTY) who had been convicted by a first instance panel of crimes against humanity, pending the completion of their appeals. The two men -- Mitar Rasevic and Savo Todovic -- had been accused of running a concentration camp in Foca where more than 700 Bosniak detainees had been mistreated and/or killed between 1992 and 1994, and had received eight and a half years and twelve year prison sentences for these crimes, respectively. Though released from custody, Rasevic and Todovic were required by the State Court to turn over their Bosnian passports (but in theory could still use dual passports), restrict their movements to Foca, and to report twice weekly to the Foca police station. We have been unable to confirm whether they are still in Bosnia, however.

Upcoming Releases

14. (U) The State Court plans to release other convicted war criminals within the next three months if the BiH CPC is not amended. They include three individuals in another "11 bis" case transferred from the ICTY -- Zeljko Mejakic, Momcilo Gruban, and Dusko Knezevic -- who are slated to be released on February 28. A first instance panel convicted the three men of crimes against humanity. Mejakic and Gruban had been accused of supervising the mistreatment of more than 3000 Bosniak detainees and the murder of more than 100 at the Omarska prison camp in 1992, while Knezevic had been accused of mistreating Bosniak detainees at the Omarska and Keraterm

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prison camps during the same time period. The three men received prison sentences ranging from 11 to 31 years for their crimes. The State Court also plans to release seven individuals in the historic Kravica case who had been convicted of genocide; this was the first war crimes case in which a court in Bosnia had handed down genocide convictions.

The men received sentences ranging from 38 to 42 years for killing 1000 Bosniak men and boys in the Kravica Farming Warehouse Cooperative in July 1995. As noted in Ref A, this case, in particular, was widely seen both within and outside of Bosnia as a major milestone in the country's efforts to tackle war crimes.

Amending the BiH Criminal Procedure Code

15. (SBU) Upon the urging of the State Court President Meddzida Kreso, the State Ministry of Justice presented the custody time limit problem to an inter-governmental commission tasked with reviewing changes to state-level criminal and criminal procedure codes. Meeting on January 21, the commission, under considerable pressure from OHR, decided to keep the original language in the BiH CPC, but to allow for a six-month extension. The commission also decided to postpone further action on this issue for roughly two weeks to give members the opportunity to review proposed amendments to the CPC called for in the National War Crimes Strategy (Ref B), and to decide whether they should send the proposals separately or as a package to State Minister of Justice Barisa Colak.

Two Options in Play

16. (C) There are two options in play with regard to amending the BiH CPC. State Court officials, with the strong backing of OHR and the other members of the international community could lobby to secure an amendment to the CPC before February 28. Success would depend in part on the ability of the commission tasked with drafting changes to the BiH CPC to act quickly and on the House of Representatives and the House of Peoples to convene soon to vote on the amendment. Parliamentary experts believe that while it is

difficult, Bosnian officials could amend the BiH CPC before February 28 if they make the issue a priority, but it would require greater executive and legislative branch initiative than the Bosniak government and Parliamentary assembly generally display.

17. (C) The second option -- the use of the Bonn Powers -- has been discussed with OHR at the staff level, but appears unlikely. Even though HighRep Lajcak has been willing to use Bonn Powers on matters related to Bosnia's cooperation with the ICTY, and could argue that an imposition connected to an extension of custody time limits fits within these parameters, most likely he would be extremely reluctant to use the Bonn Powers. The fact that he has been named Slovak Foreign Minister, and his time as HighRep is limited, further reduces the odds that he would use them (Ref C). Regardless, either option -- local action or action by the HighRep -- would require strong international community backing to succeed before February 28.

Comment

18. (C) The custody time limit issue further underscores the kinds of problems we face with regard to war crimes prosecution in Bosnia and the need for continued robust international involvement in the justice sector. This is reflected by the fact that the inter-governmental commission tasked with making recommendations about changes to the BiH Criminal Procedure Code decided to propose new language extending the custody timeframe only because they were pressed to do so by OHR. While the commission came around, it is still unclear whether Bosnian officials will amend the BiH CPC in a timely fashion to prevent the release from custody of other high-profile war criminals in the coming months. The option of using the Bonn Powers to impose changes to the CPC is also for all intents and purposes off the table given the difficult political climate in which the

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international community is operating and news of Lajcak being named as the new Slovak Foreign Minister. We will continue to press for a swift amendment of the BiH Criminal Procedure Code given the potential damage the release of convicted 11 bis and genocide suspects could do to our broader policy towards war crimes in Bosnia.
ENGLISH